IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10 .2006

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
&
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A.NOS.1666 & 1667 OF 1999

Jyothi Ammal ..Appellant in
C.M.A.1666/1999/Respondent

1.Jyothi Ammal
2.Minor A.Sasikumar ..Appellants in
C.M.A.1667/1999/Plaintiffs

Vs.

K.Anjan ..Respondent in
both the appeals/Petitioner
and Defendant

Prayer in C.M.A.No.1666/1999: C.M.A filed under Section 19 (1) of Family Court Act 66 of 1964 against the fair and decreetal order dated 03.06.1998 passed by the Principal Family Court at Madras in O.P.No.950/1990.

Prayer in C.M.A.No.1667/1999: C.M.A filed under Section 19 (1) of Family Court Act 66/1964 against the decree and judgment dated 03.06.1998 passed by the Principal Family Court at Madras in O.S.No.79/1990.

For Appellants : Mr.S.Subbiah in both
For Respondent : Mr.S.Gunalan in both

COMMON JUDGMENT

(Judgment of the court was delivered by
Justice R.Balasubramanian)

The earlier appeal is against the decree of the Family Court, Chennai in O.P.No.950/1988 granting the relief of divorce at the instance of the husband and the latter appeal is against the decree of the Family Court in O.S.No.79/1990 rejecting wife's claim for past maintenance and future maintenance. Wife is the appellant in the earlier appeal and wife and her son are the appellants in the latter appeal. Heard Mr.S.Subbiah learned counsel appearing for the appellant/appellants and Mr.S.Gunalan learned counsel for the

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respondent in each appeal.

2. Even at the outset, we want to state that we are dealing with a painful subject of deciding an issue between husband and wife revolving around wife's chastity. A learned Judge of this court in the judgment reported in 1983 (1) M.L.J. Pg.395 (Ramanathan Vs. Subbulakshmi) had held as hereunder:

> "Trial of divorce cases might have now-a-days almost become a routine, like promissory note suits. Even so, in the trial and understanding of these cases the courts must bring to bear a human approach. It is laid down by the Legislature itself that the court will have to try whether the parties could not be brought together before proceeding to enter upon an enquiry."

We tried to conciliate and we failed. The Hon'ble Supreme Court of India in the judgment reported in (2001) 5 SCC Pg.311 (Kamti Devi Vs. Poshi Ram) had laid down the degree of proof expected in matrimonial matters touching the issue like the one before us. In that judgment, the Supreme Court had held as follows:

> "The standard of proof of prosecution to prove the guilt beyond any reasonable doubt belongs to criminal jurisprudence whereas the test of preponderance of probabilities belongs to civil cases. It would be too hard if the standard of criminal cases is imported in a civil case for a husband to prove non-access as the very concept of non-access is negative in nature. But at the same time, the test of preponderance of probability is too light as that might expose many children to the peril of being illegitimatized. Therefore, the burden of the plaintiff husband should be higher than the standard of preponderance of probabilities. The standard of proof in such cases must at least be of a degree in between the two as to ensure that there was no possibility of the child being conceived through the plaintiff husband."

Again the Supreme Court, in 2005 4 SCC Pg.449 (Banarasi Dass Vs. Teeku Dutta & Another), relied on the above referred to judgment of the Supreme Court. Therefore we have enough caution in our mind before we analyse the merits and demerits of the cases projected by the respective spouses.

3. The pleadings are in English and it is elaborately

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extracted in the common judgment of the Family Court. Since the pleadings are found elaborately extracted in the common judgment of the Family Court, we are not re-stating the pleadings. We are also inclined to decide the appeals by our common judgment as done by the Family Court. We will refer the parties to the appeals as "husband" and "wife". Wife gave birth to a child named Sasikumar on 13.04.1984. Sasikumar is the second appellant in the latter appeal. Husband complained that he is not the father of Sasikumar. He pleaded that for about two years i.e., from October 1982, he did not have any sexual contact with his wife and he and his wife, from then onwards, were living in separate portions in the same house (we find that the divorce petition was presented some time in November 1984). He had further alleged that two brothers by name Elaveerasingam and Vetriveerasingam became tenants under him in the upstairs portion of the house, in which, he and his wife were living in the ground floor and his wife developed illicit intimacy with Vetriveerasingam. According to him, he came to know about this affair in October 1983 when he came to know that his wife became pregnant. He reiterated in the pleadings that since he did not have any sexual contact for more than two years, he could not be the father of the child in the womb of his wife. Wife denied the claim of the husband. She had admitted that she knew Vetriveerasingam only as a tenant in respect of a portion of the property and beyond that, she did not know anything about the said Vetriveerasingam and that she never had any contact with him at all. Her pleadings show that twice before the birth of Sasikumar, she conceived and due to pressure brought on her by her husband, she aborted on each occasion with the help of native Doctors. When she conceived again after the two abortions referred to above, husband insisted that she must abort, which she refused. She stood her ground. But however, she later on succumbed to the pressure of her husband by expressing her readiness to abort the child, if it is done in the Port Trust Hospital. As her husband was not willing for that treatment, she stood firm in carrying the child and that made her husband to develop a hatred against her and from then onwards, she was living separately. During her separate stay, her husband did not give her anything at all.

4. Wife filed O.P.No.124/1990 for permission to sue as an indigent person to claim past and future maintenance. It later on came to be registered as O.S.No.79/90. In that plaint, wife pleaded that her husband unnecessarily suspecting her, neglected her and her child. Therefore she wanted maintenance, both past and future. Husband resisted the proceeding by stating that as the wife is unchaste and Sasikumar was not born to him, he need not pay any maintenance. Evidence was let in common. Both the original petitions were taken up earlier by the Family Court and by a common order dated 10.12.1996, husband's O.P was decreed and wife's suit was dismissed. There were two appeals before this court namely, C.M.A.No.1154 & 1155/1992 at the instance of the wife and a Division

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Bench of this court, by a common judgment dated 12.06.1997, set aside the orders challenged and remitted the proceedings for fresh disposal, as the Bench found that the Family Court committed an error in marking and acting on expert's report without summoning either the author of the report or anyone connected with it. After remand, again evidence was let in. Husband examined himself as P.W.1 and marked Exs.P.1 to P.3 namely, his lawyer's notice; acknowledgement due and the reply notice. Wife examined herself as R.W.1. The expert had been examined as C.W.1 and his report came to be marked as Ex.C.1. Once again, the Family Court, by a common judgment dated 03.06.1998, decreed husband's petition as prayed for and dismissed the suit filed by the wife. Hence the present two appeals.

5. Learned counsel for the wife, by taking us through the evidence of C.W.1 and Ex.C.1 contended that his evidence does not show that he had done all the comprehensive tests available in science as on date and therefore his evidence must be rejected. Since the disputed child is shown to have been born during the subsistence of the marriage between the husband and wife and when husband had access to his wife, it shall be taken as conclusive proof for the paternity of the disputed child. Except the interested version of the husband examined as P.W.1, there is no other evidence to show that wife is unchaste. Then, it is submitted by the learned counsel that even if the D.N.A test done, the report for which is Ex.C.1, excludes husband as the father of the child, yet, when it is shown that he had access to his wife during the relevant time when the child could have been begotten, strong proof is necessary to rebut the presumption of "conclusive proof" contemplated under section 112 of the Indian Evidence Act. Mr.Gunalan learned counsel for the husband would contend, heavily relying upon the evidence of C.W.1 and Ex.C.1, that the scientific test and report excludes husband as the father of the child. Husband seeks divorce on the ground that wife voluntarily had sexual intercourse, during the subsistence of the marriage, with a person other than her spouse – a ground enumerated under section 13(1)(i) of the Hindu Marriage Act. Therefore, according to him, the evidence of C.W.1 and Ex.C.1 lend support to P.W.1's evidence that his wife voluntarily had sexual intercourse with a person other than her husband. Therefore his submission is that, no ground is made out for interfering with the judgment challenged in these two appeals. Learned counsel on either side also relied upon case laws to sustain their point.

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6. Let us now examine the records available in the case, having regard to the submissions made by the learned counsel on either side. If wife, during the subsistence of her marriage, voluntarily has sexual intercourse with a person other than her spouse, then husband is entitled to have a decree of divorce. Such an act, would not have been done openly but on the other hand, it is always done in secrecy. Therefore it is well-nigh impossible for any court to

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expect direct evidence. In other words, only in very rare cases, wife committing such an act might have been witnessed accidentally by some one. If a wife, during the subsistence of her marriage, is found closeted in a room with another male for a long time, a presumption may arise against her. But in the case on hand, we do not have any direct evidence on the conduct of the wife as alleged by her husband. There is pleading asserting misconduct on the part of the wife and a counter pleading emphatically denying such a conduct. Evidence let in by both the parties also have the same tenor. Therefore this court has a very onerous task in finding out where exactly the truth lies? As said by the Supreme Court in the case reported in Kamti Devi's case referred to supra, the burden cast upon the husband should be higher than the standard of preponderance of probabilities and the standard of proof in such cases must at least be of a degree in between the two as to ensure that there was no possibility of the child being conceived through the husband.

7. Since this court is the first court of appeal, it is open to us to find out from the various salient features available in this case to decide as to who speaks the truth and who is withholding it. Husband's consistent case is that, two years prior to the filing of the divorce petition i.e., from October 1982 onwards, he did not have any sexual contact with his wife and the separation is due to quarrels. The disputed child was born on 13.04.1984. Ex.P.1 is the lawyer's notice dated 20.04.1984 and even in that, there is an assertion that for 1-1/2 years prior to that date, husband was not having any sexual contact with his wife. There is an assertion even in that notice that wife was having an illicit intimacy with Vetriveerasingam and he is the father of the disputed child born on 13.04.1984. This is one of the serious allegations, which a husband can make against his wife. As noted earlier, husband files the petition for divorce sometime in November 1984. Ex.P.3 is the reply notice and it is dated 05.02.1985, almost 10 months after Ex.P.1 came to be issued. Of course, in Ex.P.3, she had denied her husband's accusations. But we are really surprised to find that when in Ex.P.1 a serious allegation as referred to above against the wife had been made, why she had not sent any reply immediately and which should have been the normal conduct of any wife. If the allegation made against the wife is utter falsehood, one would expect the wife to bounce back immediately denying the accusation. But in this case, wife had taken a sweet long time of almost 10 months to reply. We find from the records that she had entered appearance in the divorce petition on 04.09.1985; it is possible that she would have come to know about the proceedings much earlier and therefore, there is no surprise that only on legal advice, she would have sent the reply notice/Ex.P.3. We also find that she had filed her counter to the divorce petition only in February 1986.

8. According to the husband, on account of the quarrels

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between him and his wife, he was living separately from October 1982 onwards, as already stated, in a separate portion in the same house. But however, according to the wife, the cause for separation is that, she initially refused to abort the disputed child when it was in her womb and later on when she agreed for an abortion to be done at the Port Trust Hospital, her husband was not willing to take her to the said hospital for aborting the disputed child. She is very categorical that only since then onwards, she was living separately from her husband. Therefore, spouses parted having lost compatibility, is admitted. The question is, when did they part company namely, from October 1982 onwards as spoken to by the husband or from the time when wife stood firm not to abort the child in dispute. We find, on going through wife's pleadings, that she has not come out with any specific date or month or year from which she started living separately. Of course, in her oral evidence, she would state that in the month of October 1984, she got separated from her husband and when the foetus was 12 weeks old, she and her husband had problems and problems aggravated from the birth of Sasikumar. She had admitted in her cross examination that she did not specifically plead in her counter that she started living separately from October 1984 onwards. Though strict rules of evidence may not be adhered to in matrimonial matters, yet, on a crucial issue like the one referred to above, we expect wife to plead from which point of time she got separated from her husband. In the counter filed to the divorce petition, wife had stated that before the birth of the disputed child, she conceived twice and on both the occasions, she aborted at the instance of her husband with the help of native Doctors. She does not even say when did such abortions take place. The native Doctors, who treated her, have not been examined. At the risk of repetition, we state that in the pleading, wife had stated that twice earlier, before the birth of the disputed child, she conceived and aborted, though not on her own volition. The couple had four children out of their wedlock and they are not disputing it. But they are not seeing eye to eye on the birth of the disputed child. But however, we find in her evidence before court that she had stated that prior to the birth of the disputed child, she conceived and aborted thrice. A mother will never forget in her life how many times she conceived; how many times she aborted and how many times she carried the child till the end.

9. She had admitted, when she was cross examined, that she had no proof that she had undergone three abortions. She had further admitted that from the time foetus was 12 weeks old, she did not have any marital relationship with her husband. We also find that even in her evidence she did not depose the month or the year in which she had aborted earlier. When husband had consistently pleaded and deposed that his wife had illicit intimacy with Vetriveerasingam, the court expects wife to come forward with a definite stand. We have already noted earlier her stand in the counter statement, where she had only

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stated that she knew Vetriveerasingam only as a tenant and that she had no other detail about him. But in her evidence in chief, she had admitted as hereunder:

> "Vetriveerasingam and my husband belong to the same town; Vetriveerasingam's father and my husband are friends; Elaveerasingam/elder brother of Vetriveerasingam, is the tenant in the house in which we live and he pays rent to my husband; Vetriveerasingam used to visit the house often to see Elaveerasingam; however I have no connection whatsoever with Vetriveerasingam."

When she was cross examined, she had admitted as hereunder:

> "Even from our childhood, we know Vetriveerasingam's family; myself, my husband and Vetriveerasingam hail from the same town; two or three years prior to the birth of the disputed child, Elaveerasingam became the tenant; Elaveerasingam is married and has a child while Vetriveerasingam is a bachelor."

Therefore it is clear that the stand taken by the wife in her counter statement that except knowing Vetriveerasingam as the tenant, she does not know anything else about him, is an utter falsehood. In the pleadings she states that Vetriveerasingam is the tenant while in her evidence she states that Elaveerasingam - elder brother of Vetriveerasingam, alone was the tenant. Therefore we are wondering as to why we should not hold that wife has no regard for truth and consistency in her case.

10. According to wife, separation took place when the move to abort the child and ultimately when she decided to carry the child (disputed child) till the end. She would state that foetus was 12 weeks old at that time. According to husband, from October 1982 onwards, he was no-where near his wife, though both were living under the same roof but in different portions. Husband is categorical that from October 1982, he did not go anywhere near his wife. The expression "access" used in section 112 of the Indian Evidence Act had been held by courts as "opportunities to reach". Therefore the court must have materials to come to the conclusion that, during the period when wife conceived, husband had opportunities to approach her or vice-versa. Only in this context, we have stressed on the need for definite pleading and proof from either side. If it is shown that the parties had no access to each other at the time when the child could have been begotten, as held by the Supreme Court in Kamti Devi's case referred to above, the presumption under section 112 of the Indian Evidence Act stands rebutted. The word "access" connotes only existence of opportunity for marital intercourse. In this context, we

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applied our mind to find out whose evidence regarding cause for separation deserves acceptance? As held by the Supreme Court in Banarasi Dass's case referred to supra, the presumption under section 112 of the Indian Evidence Act can only be displaced by a strong preponderance of evidence and not by a mere balance of probabilities. Having the above in our mind, we proceeded to analyse the cause for separation as alleged by the respective parties, since it may give a vital clue to decide the issue of "access". According to husband, repeated quarrels resulted in strained relationship between the parties and as such, husband was not even on talking terms for two years i.e., from October 1982 with his wife and he did not have any intercourse at all with his wife. Wife's evidence is that, she conceived through her husband resulting in the birth of Sasikumar and though her husband wanted her to abort, she did not agree for it initially, but later when she agreed for abortion to be done in the Port Trust Hospital, her husband did not agree. According to wife, after the admitted birth of four children to the couple, she conceived for the 5th time and 6th time as per the pleading and 5th, 6th and 7th time as per her oral evidence before she came to conceive again. She is very positive that since she and her husband had fallen out as to how and in what manner when she became pregnant for the 8th time must be put an end to, problem arose between the spouses. According to her, though initially she refused to abort on the 8th occasion, yet, ultimately she agreed for the abortion, if done in the Post Trust Hospital, Chennai, where her husband is employed and since her husband was not willing for that, she had to carry the child and thus problems arose. This reason given by the wife is most unimpressive and unnatural. It does not appeal to us at all. For aborting the 5th, 6th and 7th child conceived, there is no proof. According to wife, on all the occasions, husband gained over her in bringing an end to the child in the womb. If for the 8th child (disputed child), husband wanted to have that child also aborted as spoken to by wife, we see no reason at all as to why husband would have refused to take his wife to the Post Trust Hospital for abortion. There is unnaturalness in the evidence of R.W.1 in this regard. In Ex.P.3, the reply notice, there is no statement that wife conceived for the 5th, 6th and the 7th time and on all those occasions, she aborted at the instance of her husband. In Ex.P.3 we find that wife accused her husband of bringing pressure on her to abort only when the foetus of the disputed child was in her womb. Altogether, a different story is also given in Ex.P.3 and it is that, after the birth of the third child, husband found it difficult to run the family and therefore he was putting pressure on his wife to bring money from her parents. Ex.P.3 proceeds to state that under great strain, wife's father sold the jewels and sent money to her. It is further stated in Ex.P.3 that husband went on threatening his wife to bring amounts in thousands from her father. This version found in Ex.P.3 is neither pleaded in any of the proceedings or even deposed. Therefore we find that the evidence of R.W.1 as to the cause for her separation from her husband is artificial, unnatural and very

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difficult to be believed.

11. In Ex.P.1 as well as in the pleading in the divorce petition, husband had stated that for the birth of the disputed child, his wife got admitted in the Port Trust Hospital on her own without the knowledge using the family identity card. Neither in Ex.P.3, the reply notice, nor in the counter filed to the divorce petition, wife had denied this. Wife's case is that she conceived for the 5th, 6th and 7th time and on all those occasions, she was forced to abort at the instance of her husband. On the other hand, what was put to him in the cross examination is that, when wife was in the family way, having a 12 weeks old foetus in her womb namely, on 16.10.1983, husband pressurized her to abort, which she successfully resisted and four times prior to that, husband arranged for her abortion. To P.W.1, it was suggested by the wife that they were living together till 16.10.1983 meaning thereby that thereafter they were not together. However, when she deposed as R.W.1, she had stated even in her evidence in chief that the separation was in October 1984. Therefore going by the overall materials noted by us in the earlier portion of this judgment, we see no compelling reason at all as to why we should not accept the evidence of P.W.1 in preference to the oral evidence of R.W.1 (wife). In other words, when Ex.P.3 itself shows that even after the birth of the third child problems arose between the spouses in terms of money, though subsequent to that the 4th child was born, the possibility of the relationship between the parties getting worsened looms large. In (1975) 2 SCC Pg.730 (The Dollar Co. Madras Vs. Collector of Madras), the Supreme Court held as hereunder:

> "A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong."

12. Husband, wife and the disputed child were subjected to DNA test. C.W.1 is the expert and Ex.C.1 is his report. We extract the contents of Ex.C.1 as hereunder:

"Comprehensive Report on R & D:3/90

Genetic System	Phenotype		
	Alleged Father Tr.K.Anjan	Mother Tmt.Jothiammal	Child Selvan Sasikumar
Redcell ABO	A	B	B

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antigens	*Rh MN	ccdee NN	CCDee MM	CCDee MN
Serum Proteins	Haptoglobin(Hp)	2	2	2
	Glyoxalase (GLO)	2-1	2	2
Saliva	Secretor status	Sec	Sec	Sec
	Salivary Glyco Protein (Gl)	III	IV	IV
	Amylase (Amy1)	A	A	A
HLA	o Locus A	A3,25(10)	A11,-	A11,w19
	**Locus B	B5,7	B5	B5,62(15)
	ooLocus C	Cw7, -	Cw-	Cw3, -

Opinion:

* Child Selvan Sasikumar is homozygous for CC antigens of Rh system but the alleged father Tr.K.Anjan is having only cc and not C antigen.

o Child Selvan Sasikumar is having A11, w19 antigens of HLA-A locus but none of these antigens are present in the alleged father Tr.K.Anjan.

** Child Selvan Sasikumar is having B5, 62(15) antigens of HLA-B locus but the alleged father Tr.K.Anjan is not having62(15) antigen.

oo Child Selvan Sasikumar is having Cw3, - antigens of HLA-C locus but this antigen is not present in the alleged father Tr. K.Anjan.

Hence the alleged father Tr.K.Anjan is excluded from being the father of the child Selvan Sasikumar.

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(N.GUNACHANDRAN)
M.Sc.
Scientific Assistant

(DR.C.DAMODARAN)
M.Sc., DEL., Ph.D.,
Asst.Chemical Examiner to Govt.
Director Forensic Science

We extract the relevant portion in the evidence of the expert:

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"The Genetic Markers include ABO System RH System Mn System under Red Cell Antigens of blood, Haptoglobin System, Complement System 3 under Serum Proteins of blood, Esterase-D, Glyoxalase-I Systems under Red Cell enzymes of blood, Secretor Status, Salivary Glycoprotein and Amylase 1 Systems under Saliva and HLA – A, HLA – B, HLA – C under White Cells of blood."

C.W.1 had stated that he prepared individual report of father, mother and the disputed child, in which all the genetic markers test have been recorded and on the strength of such individual report, he gave the comprehensive report – Ex.C.1, which, we have extracted above. He deposed as hereunder:

"After consideration of the various tests conducted on Thiru.K.Anjan, Tmt.A.Jothi Ammal and Selvan Sasikumar, I am of the opinion (1) Selvan Sasikumar is homozygous for CC antigens of Rh system – this means he has received C antigens from each of the parents, whereas Thiru.K.Anjan is not having C antigen in him but only C antigen in him. (2) Selvan Sasikumar is having A11, W19 antigens of HLA-A Locus in him – this means that he should have received A11 or W19 from either of his parents. Thiru.K.Anjan is not having either A11 or W19 antigens with him. (3) Selvan Sasikumar is havinB5, 62 (15) antigens of HLA-B locus in him – this means B5 and 62(15) should have come to him from either of this means B5 and 62(15) should have come to him from either of his parents. Thiru.K.Anjan was not having 62(15) antigen in him. Selvan Sasikumar is having Ow3 – antigens under HLA-C locus in him. These antigens should have come from either of his parents, whereas Thiru.K.Anjan is having only Ow7 antigens in him and not Ow3. Based on the above observations, I came to the final opinion that Thiru.K.Anjan has to be excluded from the paternity of the child Selvan Sasikumar. The same opinion has been jointly arrived by my colleague also and both of us have jointly signed Ex.C.1 Series."

In his cross examination he had deposed that he has an experience of 16 years; his examination revealed that the disputed child has mother's (B) group of blood; it is true that a person having a red cell antigent combination of NN could also be the father of a child bearing red cell antigens of MN and therefore it is possible on that basis that the child could have been born to Anjan (husband). But he had added in an emphatic manner that such single test alone is not conclusive ; that is why he had done a comprehensive test and on the basis of the comprehensive test, he can say that antigen is not the father of the disputed child. He had also added that the

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comprehensive test is the conclusive proof of his finding. He had further stated that in the Indian population, the factor H.P.2 gene is common and the said factor is found in this case with the father, mother and the disputed child. He ended his evidence by stating that

> "it is not correct to say from Ex.C.1 that petitioner Anjan could be the father of the minor child Sasikumar on the other hand from Ex.C.1 it is clear that the petitioner Anjan is not the father of the minor child Sasikumar."

A learned Judge of this court in the judgment reported in AIR 1959 Mad. Pg.396 Subayya Gounder Vs. Bhoopala) had held as hereunder:

> "The blood group of a person is determined by the characters which it contains. It must contain at least one character of each set, and the characters are inherited according to fixed rules. A child cannot have a character which he does not inherit from one or other of his parents. The technic of this blood grouping has been developing with the passage of years. "
>
> " The value of the test is however limited."
>
> "The tests, have their limitations; they may exclude a certain individual as the possible father of a child but they cannot possibly establish paternity. They can only indicate its possibilities. Another man with the same group as the father could be responsible for the child in question."

The Hon'ble Supreme Court of India, in Kamti Devi's case referred to supra, had held as hereunder:

> "The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of Section 112 of the Act e.g if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness inlaw would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child of which he may be innocent. But even in such a case the law leans in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness

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must be answered in the light of what is meant by access or non-access as delineated herein."

Therefore there cannot be any difficulty in acting on the evidence of C.W.1 and Ex.C.1, the D.N.A test done and the report. Earlier in this judgment we have found that the husband's case that he had no access to his wife deserved acceptance and accordingly, we accepted his evidence. Kamti Devi's case is relied on by the Supreme Court in Banarasi Dass's case referred to earlier. Learned counsel for the wife brought to our notice the judgment of the Supreme Court in the case reported in 1999 (7) SCC Pg.280 (State of H.P Vs. Jai Lal & Others) to contend that expert's evidence do not warrant acceptance. In this case, we find that C.W.1 had stated that he had completed 24 years of service in the Forensic Department and on the date of conducting the test, he had already put in 16 years of experience. We find from Ex.C.1 that in addition to C.W.1, the Assistant Chemical Examiner, had also signed at the foot of it. Therefore we see no reason at all as to why we should doubt the credibility of the expert's evidence. What would be the credibility of an expert's evidence would depend upon the facts of each case and the subject about which he deposes. There is not even a suggestion to C.W.1 that he is incompetent to conduct the DNA test. Therefore we are unable to eliminate the evidence of C.W.1 and Ex.C.1 from consideration. The DNA test excludes Anjan as the father of the disputed child. Therefore we hold that husband had no access to his wife during the time she could have begotten the child and expert's evidence excludes husband as the father of the disputed child. If this is our conclusion, then it must be held that the ground put forward for divorce is established.

13. For all the reasons stated above, we find no ground to interfere with the orders challenged and accordingly, the appeals are dismissed with no order as to costs.

Vsl

Sd/
Asst.Registrar

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Sub Asst.Registrar

TO

1. THE PRINCIPAL JUDGE,
FAMILY COURT, MADRAS.

2. THE RECORD KEEPER,
VR SECTION, HIGH COURT, MADRAS.

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2 CCS TO MR.S. SUBBIAH, ADVOCATE SR 46818

2 CCS TO MRS. GUNALAN, ADVOCATES SR 46794

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